

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MELVIN JAMES BLAKE,)	Case No. 12-CV-2251-
)	MMA(JMA)
Petitioner,)	
)	REPORT AND RECOMMENDATION
v.)	RE MOTION TO DISMISS
)	PETITION FOR WRIT OF
J. TIM OCHOA, WARDEN,)	HABEAS CORPUS
)	[Doc. No. 15]
Respondent.)	
)	
)	

I. INTRODUCTION

Petitioner Melvin James Blake (hereafter "Petitioner"), a state prisoner proceeding *pro se*, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (hereafter "Petition") challenging the Governor's August 1, 2011 decision to reverse the Board of Parole Hearing's grant of parole. Petitioner contends federal habeas relief is proper because the Governor's decision was an unreasonable determination of the facts in light of the evidence presented. (Petitioner's Traverse at

3.)^{1/} Respondent J. Tim Ochoa, Warden (hereafter "Respondent") moves to dismiss the Petition. (Motion to Dismiss.) Respondent argues the Petition must be dismissed because it does not set forth a cognizable claim for federal habeas corpus relief. (Id. at 1.)

The undersigned has reviewed the Petition, Respondent's Motion to Dismiss, and Petitioner's Opposition to the Motion to Dismiss. Based on the pleadings and for the reasons set forth below, the undersigned RECOMMENDS Respondent's Motion to Dismiss be GRANTED and the Petition be DISMISSED with prejudice.

II. FACTUAL & PROCEDURAL BACKGROUND

In 1976, Petitioner was convicted of first degree murder in San Diego Superior Court. (Order Transferring Action at 1.) Currently, he is serving a sentence of life imprisonment at Chuckawalla Valley State Prison. (Id.) On March 4, 2011, Petitioner appeared before the Board of Parole Hearings for a subsequent parole consideration hearing. (Pet., Doc. No. 1-1 at 20.)^{2/} The Board of Parole Hearings found Petitioner suitable for parole. (Id., Doc. No. 1-3 at 12-19.) However, on August 1, 2011, Governor Brown reversed the decision of the Board of

^{1/}Petitioner entitled the document "Petitioner's Traverse." However, the Court construes the document as Petitioner's Opposition to Respondent's Motion to Dismiss.

^{2/}All references to the record are to the Court's ECF pagination, unless otherwise noted.

1 Parole Hearings and denied parole under California Penal
2 Code § 3041.2.^{3/} (Id. at 21-24.)

3 Petitioner filed a Petition for Writ of Habeas
4 Corpus challenging the Governor's decision in San Diego
5 County Superior Court. On October 5, 2011, that court
6 denied the petition. (Id. at 26-32.) Petitioner
7 subsequently filed a Petition for Writ of Habeas Corpus in
8 the California Court of Appeal. (Petitioner's Opposition
9 to Motion to Dismiss at 2.) The California Court of
10 Appeal denied that petition without an opinion. (Id.)
11 Finally, Petitioner filed a Petition for Writ of Habeas
12 Corpus in the California Supreme Court. The California
13 Supreme Court summarily denied that petition. (Id.)

14 On August 6, 2012, Petitioner filed the Petition for
15 Writ of Habeas Corpus that is now before this Court.
16 Although the Petition raises five claims (see Pet., Doc.
17 No. 1 at 5-6), Petitioner summarizes them as stating the
18 two following claims: (1) violation of his due process
19 rights when the Governor reversed his parole grant based
20 upon an unreasonable determination of the facts in light
21 of the evidence presented, and (2) the Governor's decision
22 denying parole was not supported by sufficient evidence
23 that Petitioner poses an unreasonable risk of danger to
24 society. (Petitioner's Opposition to Motion to Dismiss at
25 3.)

26
27 ^{3/}Penal Code section 3041.2 authorizes the Governor to review
28 parole decisions of the Board of Parole Hearings concerning persons
sentenced to an indeterminate term upon conviction of murder. Cal.
Penal Code § 3041.2.

Respondent moves to dismiss the Petition on the ground that it fails to state a cognizable federal claim for federal habeas corpus relief. (Motion to Dismiss at 1.)

III. STANDARD OF REVIEW

The Petition is governed by 28 U.S.C. § 2254, as amended by the 1996 Antiterrorism and Effective Death Penalty Act ("AEDPA"). Section 2254(a) sets forth the following scope of review for federal habeas corpus claims:

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a).

As amended, 28 U.S.C. § 2254(d) reads:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim --

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C. § 2254(d)(1-2).

Under § 2254(a), a federal court may issue a writ of habeas corpus to a state prisoner "only on the ground that he is in custody in violation of the Constitution or laws

1 or treaties of the United States." See, e.g., Swarthout
2 v. Cooke, 562 U.S. ----, 131 S. Ct. 859, 861 (2011);
3 Wilson v. Corcoran, 562 U.S. ----, 131 S. Ct. 13, 16
4 (2010) (quoting 28 U.S.C. § 2254(a)). The Supreme Court
5 has continually held that "federal habeas corpus relief
6 does not lie for errors of state law." See, e.g., Cooke,
7 131 S. Ct at 861; Estelle v. McGuire, 502 U.S. 62, 67
8 (1991) (quoting Lewis v. Jeffers, 497 U.S. 764, 780
9 (1990)).

10 To obtain federal habeas relief, Petitioner must
11 satisfy either § 2254(d)(1) or § 2254(d)(2). See Williams
12 v. Taylor, 529 U.S. 362, 399, 403 (2000). Under section
13 2254(d)(1), "a state court decision is 'contrary to our
14 clearly established precedent if the state court applies
15 a rule that contradicts the governing law set forth in our
16 cases' or 'if the state court confronts a set of facts
17 that are materially indistinguishable from a decision of
18 this Court and nevertheless arrives at a result different
19 from our precedent.'" See, e.g., Lockyer v. Andrade, 538
20 U.S. 63, 73 (2003) (citing Taylor, 529 U.S. at 405-06).
21 Under § 2254(d)(2), "a federal habeas court may grant the
22 writ if the state court identifies the correct governing
23 legal principle from this Court's decisions but unreason-
24 ably applies that principle to the facts of the
25 prisoner's case." Lockyer, 538 U.S. at 75 (citing Taylor,
26 529 U.S. at 413). The Supreme Court has clarified that
27 even an erroneous or incorrect state court application of
28 clearly established law is insufficient for a habeas

1 grant, unless the state court's application was
2 "objectively unreasonable." Lockyer, 538 U.S. at 75.

3 When there is no reasoned decision from the state's
4 highest court, a federal habeas court "looks through" to
5 the underlying appellate court decision. See Ylst v.
6 Nunemaker, 501 U.S. 797, 801-06 (1991). If the
7 dispositive state court order does not "furnish a basis
8 for its reasoning," the federal habeas court must conduct
9 an independent review of the record to determine whether
10 the state court's decision is contrary to, or an
11 unreasonable application of, clearly established Supreme
12 Court law. See Delgado v. Lewis, 223 F.3d 976, 981-82
13 (9th Cir. 2000) (overruled on other grounds by Lockyer,
14 538 U.S. at 75-76). A state court need not cite Supreme
15 Court precedent when resolving a habeas corpus claim.
16 Early v. Packer, 537 U.S. 3, 8 (2002). Absent citations
17 to Supreme Court precedent, habeas relief is not merited
18 if the state court decision neither contradicts the
19 reasoning nor the result of Supreme Court holdings. Id.

20 **IV. DISCUSSION**

21
22 Petitioner claims that habeas relief is proper based
23 on a violation of his due process rights in connection
24 with the Governor's decision to deny parole. Petitioner
25 accuses the Governor of continued reliance on unchanging
26 circumstances, i.e., the gravity of his commitment
27 offense, and of unreasonably determining that Petitioner
28 still constitutes a danger to society. (Pet., Doc. No. 1

1 at 22-38.) Petitioner's contentions are premised on the
2 Governor's decision being an unreasonable application of
3 California's "some evidence" standard.

4 The Supreme Court has stated many times that federal
5 habeas corpus relief is not available to correct alleged
6 errors in a state court's application or interpretation of
7 state law. See, e.g., Cooke, 131 S. Ct at 861^{4/}; Estelle,
8 502 U.S. at 67 (quoting Jeffers, 497 U.S. at 780). The
9 Ninth Circuit interpreted the Cooke holding as providing
10 that "there is no substantive due process right created by
11 California's parole scheme." Styre v. Adams 645 F.3d
12 1106, 1108 (9th Cir. 2011). Since a "mere error of state
13 law" is not a denial of due process, the only federal
14 right at issue in a parole context is procedural. Cooke,
15 131 S. Ct at 863; see also Estelle, 502 U.S. at 67-68.
16 Therefore, in deciding a federal due process claim, the
17 federal court must look to the process the Petitioner
18 received, not to the merits of the Governor's decision.
19 Cooke, 131 S. Ct at 863.

21 ^{4/}In Cooke, one of the two petitioners was convicted of first-
22 degree murder and sentenced to imprisonment for seven years to life
23 with the possibility of parole. In 2003, the parole board granted
24 the petitioner parole, but the Governor exercised his authority and
25 reversed the parole grant. The Governor cited the gravity of the
26 petitioner's crime along with his criminal history, failure to
27 participate in self-help programs, and propensity for substance
28 abuse. The petitioner exhausted his state court remedies before the
District Court granted habeas relief. The Ninth Circuit affirmed
the holding that the Governor's decision was an unreasonable
application of California's "some evidence" rule and was an
unreasonable determination of the facts in light of the evidence
presented. The Supreme Court reversed, holding that there was no
federal due process violation. Cooke, 131 S. Ct. at 861.

1 In Cooke, the Supreme Court engaged in the standard
2 analysis under the Due Process Clause, which proceeds in
3 two steps: (1) whether there exists a liberty or property
4 interest of which a person has been deprived, and if so,
5 (2) whether procedures followed by the State were
6 constitutionally sufficient. Cooke, 131 S. Ct at 861.
7 The Supreme Court left intact Ninth Circuit precedent that
8 California law creates a liberty interest in parole. Id.
9 Therefore, the Due Process Clause requires fair procedures
10 for its vindication. Id. at 861-62.

11 Federal due process procedures in the context of
12 parole are minimal. See id. at 862; Greenholtz v. Inmates
13 of Neb. Penal and Correctional Complex, 442 U.S. 1, 16
14 (1979). The Supreme Court has held that adequate process
15 for a prisoner subject to a parole statute similar to
16 California's is allowing an inmate the opportunity to be
17 heard and providing the inmate with a statement describing
18 the reasons why parole was denied. Greenholtz, 442 U.S.
19 at 16. In Cooke and Greenholtz, the Supreme Court held
20 that the Constitution does not require more than these
21 protections. Cooke, 131 S. Ct at 862; Greenholtz, 442
22 U.S. at 16.

23 Petitioner appeared before the California Board of
24 Parole Hearings on March 4, 2011. (Pet., Doc. No. 1-1 at
25 20.) At the parole hearing, Petitioner was given the
26 opportunity to be heard and to contest the evidence
27 against him. (Id., Doc. No. 1-1 at 20 to Doc. No. 1-3 at
28 20.) Also, the Governor provided Petitioner with a state-

1 ment of reasons why his parole was denied. (Id., Doc. No.
2 1-3 at 22-24.) The Governor based his decision to reverse
3 the Parole Board's parole grant partially on the
4 evaluation of a psychologist who examined Petitioner, and
5 Petitioner's "high and "moderate" chances of recidivism.
6 (Id. at 22-23.) The Governor further based his decision
7 on the following: the Petitioner's lack of insight on his
8 underlying crime of murder, his insufficient participation
9 in self-help programs, and his lack of well-considered
10 parole plans. (Id.) Petitioner does not dispute receivi-
11 ng the procedural protections afforded to him by federal
12 due process. Since the Petitioner was afforded the
13 procedural protections required by federal due process as
14 established in Greenholtz and Cooke, there is no
15 cognizable claim set forth for federal habeas corpus
16 relief.

17 Therefore, the Court RECOMMENDS that Respondent's
18 Motion to Dismiss be GRANTED and the Petition be DISMISSED
19 with prejudice.

20 **V. CONCLUSION**

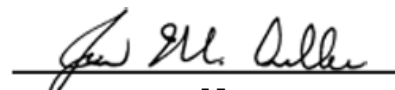
21 After a review of the record in this matter, the
22 undersigned Magistrate Judge finds that Petitioner has not
23 established a claim for federal habeas corpus relief under
24 the applicable legal standards. Therefore, the Court
25 RECOMMENDS that Respondent's Motion to Dismiss be GRANTED
26 and the Petition be DISMISSED with prejudice.
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1 This Report and Recommendation of the undersigned
2 Magistrate Judge is submitted to the United States Dist-
3 rict Judge assigned to this case, pursuant to the provi-
4 sion of 28 U.S.C. § 636(b)(1).

5 **IT IS ORDERED** that no later than July 17, 2013, any
6 party may file written objections with the Court and serve
7 a copy on all parties. The document should be captioned
8 "Objections to Report and Recommendation."

9 **IT IS FURTHER ORDERED** that any reply to the objec-
10 tions shall be filed with the Court and served on all
11 parties no later than July 31, 2013. The parties are
12 advised that failure to file objections within the spec-
13 ified time may waive the right to raise those objections
14 on appeal of the Court's order. See Turner v. Duncan, 158
15 F.3d. 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d
16 1153 (9th Cir. 1991).

17 DATED: June 26, 2013

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20 Jan M. Adler
21 U.S. Magistrate Judge
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